Mar 26-7 Argued by Mr. Ballard
Mr. Colb. on supplemental submit

March 29 - Aff. Miller

Hayes - Lucas 7 How 10 Pet. 400

SUPREME COURT OF THE UNITED STATES.

No. ~~210~~ 135.

CORNELIUS F. BUCK, PLAINTIFF IN ERROR,

vs.

HORACE N. COLBATH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 219.

CORNELIUS F. BUCK, PLAINTIFF IN ERROR,

vs.

HORACE N. COLBATH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the supreme court of the State of Minnesota, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Cornelius F. Buck, plaintiff in error, and Horace N. Colbath, defendant in error, in a civil action, a manifest error has intervened to the great damage of the said plaintiff in error, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seal of the national government, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, chief justice of the said
2 Supreme Court this 16th day of March, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

H. E. MANN,
Clerk of the circuit court of the United States, for the district of Minnesota.

Filed March 16th, 1863.

A. McELRATH, *Dep. Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

To Horace N. Colbath, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Cornelius F. Buck is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lafayette Emmett, chief justice of the said supreme court of the State of Minnesota, this 16th day of March, in the year of our Lord 1863.

L. EMMETT, *Ch'f Jus. S. C.*

4 Filed March 16th, 1863.

A. McELRATH, *Dep. Clerk.*

Due service of the within citation is hereby admitted on the 23d day of March, A. D. 1863.

D. A. SECOMBE,
Att'y and of counsel for def'ts in error.

5 *Bond on writ of error.*

Supreme court State of Minnesota.

Know all men by these presents that we, Cornelius F. Buck, James E. Thompson, and Horace Thompson, are held and firmly bound unto Horace

N. Colbath in the sum of forty-five hundred dollars, lawful money of the United States, to be paid to the said Horace N. Colbath, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 16th day of March, A. D. 1863.

The condition of this obligation is such that whereas the said Horace N. Colbath has recovered a judgment in the supreme court of the State of Minnesota, against the said Cornelius F. Buck affirming a judgment rendered on the third day of June, A. D. 1862, in favor of said Horace N. Colbath, and against the said Cornelius F. Buck, in the district court of the fourth judicial district, for the county of Anoka, in said State of Minnesota, for the sum of two thousand one hundred and eighty-six and 61-100 dollars, which said judgment of affirmance was rendered on the sixth day of March, A. D. 1863; and whereas the said Cornelius F. Buck, in order to obtain a reversal of the same, has sued out a writ of error to the Supreme
6 Court of the United States:

Now, therefore, if the above-named Cornelius F. Buck shall prosecute his said suit of error to effect, and shall answer all damages and costs and pay the said judgment if he shall fail to make good his plea, then this obligation shall be null and void; otherwise, the same shall remain in full force and virtue.

CORNELIUS F. BUCK. [SEAL.]
JAMES E. THOMPSON. [SEAL.]
HORACE THOMPSON. [SEAL.]

Executed and delivered in presence of—
HENRY L. WILLIAMS.

STATE OF MINNESOTA, *Ramsey County, ss:*

On this 16th day of March, A. D. 1863, before me personally came Cornelius F. Buck, James E. Thompson, and Horace Thompson, to me well known to be the persons described in and who executed the foregoing bond, and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed.

HENRY L. WILLIAMS,
[SEAL.] *Notary Public, Ramsey C., Minn.*

7 STATE OF MINNESOTA, *Ramsey County, ss:*

James E. Thompson, and Horace Thompson, of said county, being duly sworn, each for himself says that he is a resident and freeholder of said State, and is worth the sum of forty-five hundred dollars over and above all his debts and liabilities which he owes or has incurred, and exclusive of property by law exempt from execution.

JAMES E. THOMPSON.
HORACE THOMPSON.

Sworn to and subscribed before me this 16th day of March, A. D. 1863.

HENRY L. WILLIAMS,
[SEAL.] *Notary Public Ramsey Co., Min.*

Endorsed: I hereby approve of the within bond.

L. EMMETT, *Ch'f Jus. S. C.*

Filed March 16th, 1863.

A. McELRATH, *Dep't. Clerk.*

8 UNITED STATES OF AMERICA, *ss:*

Supreme court, State of Minnesota.

The State of Minnesota to the Hon. C. E. Vanderburgh, judge of the district court of fourth judicial district of said State of Minnesota:

Whereas it has been represented to us that in a certain action lately pending in your court, before you, sitting within and for the county of Anoka in said district, wherein Horace N. Colbath was plaintiff and Cornelius F. Buck defendant, error has intervened to the damage, as it is said, of the said defendant, and we being willing that such error, if any there should be, may be corrected, and full and speedy justice done in that behalf, do command you that if final judgment be thereupon given, then without delay you cause to be sent to us, distinctly and openly, under the seal of your court, and annexed to this writ, a certified transcript of the judgment roll, bill of exceptions, and other proceedings on file and of record in said cause in your court, that having the same in our said supreme court on or before the first day of the next term thereof to be held at the capitol, in the city of St. Paul, in said State, we may cause further to be done therein what of

9 might and according to the laws of the land ought to be done.

Witness the Hon. Lafayette Emmett, chief justice of said supreme court, and the seal thereof affixed at St. Paul aforesaid the seventeenth day of June, A. D. 1862.

[SEAL.] A. J. VANVORHES, *Clerk.*
By A. McELRATH, *Deputy.*

Endorsed: Title of the cause, and filed June 17th, 1862.
R. M. JOHNSON, *Clerk.*

Filed in supreme court July 1st, 1862.
A. McELRATH, *Dep. Clerk.*

10 *Summons.*

The State of Minnesota, county of Anoka, district court, fourth judicial district.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

The State of Minnesota to Cornelius F. Buck, the defendant above named:

You are hereby summoned and required to answer the complaint in the above-entitled action, which is on file in the office of the clerk of the above-named court, and to serve a copy of your answer to the said complaint on the subscriber, at his office, in St. Anthony, in the county of Hennepin, in said State, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the pl'ff in this action will have his damages assessed by a jury or the amount he is entitled to recover ascertained by the court or under its direction, and take judgment for the amount so assessed or ascertained.

D. A. SEACOMBE, *Pl'ff's Att'y.*

Dated September 2nd, 1861.
Endorsed: Filed April 22nd, 1862.
R. M. JOHNSON, *Clerk.*

11 State of Minnesota, county of Anoka, district court, fourth district.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

The complaint of the pl'ff in the above-entitled action respectfully shows

to the court that at Monticello, in the county of Wright, in the said State, on the 30th day of August, 1861, the said pl'ff was the owner of and in possession of certain goods, wares, and merchandise, mentioned and described in the inventory hereto annexed; that at the said time and place the said goods, wares, and merchandise were of the value and worth the sums respectively in said inventory set opposite to each article thereof, and that the said defendant at the said time and place, without the authority or consent of the said pl'ff, took and carried away the said goods, wares, and merchandise from the possession of the said pl'ff, wherefore the pl'ff demands judgment against the said defendant for the sum of two thousand ninty-three and 61-100 dollars, with interest from the said time, together with the costs of this action.

D. A. SEACOMBE, *Att'y for Pl'ff.*

Dated September 2nd, 1861.

12 STATE OF MINNESOTA, *Hennepin County, ss:*

Horace N. Colbath, the pl'ff in the above and foregoing entitled action, being duly sworn, says that the foregoing complaint is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

H. N. COLBATH.

Subscribed and sworn to this September 2nd, 1861, before me.

LARDNER BOSTWICK, *Judge of Probate.*

13 *Inventory.*

10 pairs gents' D. and kip boots, $5 50	$25 00
12 pairs gents' boots, copper tip, 3 25	39 00
12 pairs gents' prairie boots, 3 00	36 00
10 pairs L. size tap soles boots, 3 50	35 00
12 pairs boys' best kip boots, 1 65	19 80
21 pairs gents' ½ welt boots, 2 65	55 65
11 pairs P. calf boots, 2 75	30 25
55 pairs kip brogans, 1 20	66 00
5 pairs custom-made boots, 3 50	17 50
5 pairs home-made boots, 3 75	18 75
3 pairs fancy tip kip 6-11 boots, 3 25	9 75
9 pairs cavalry gr. 6-11 boots, 3 85	33 65
11 pairs boys' kip boots, 2 00	22 00
11 pairs boys' P. calf boots, 2 15	23 65
8 pairs men's calf boots, 2 75	22 00
8 pairs men's French boots, 4 00	32 00
13 pairs boys' and youth's boots, 1 50	19 50
11 pairs gent's sup. calf boots, 2 75	30 25
97 pairs W. calf and kip boots, 1 20	116 40
16 pairs gent's calf brogans, 137½	20 00
9 pairs gr. plow shoes, 1 60	14 40
54 pairs boys' sup. brogans, 95	51 30
47 pairs boys' sup. brogans, 80	37 60
76 pairs gents' brogans, 1 20	91 20
23 pairs gents' Oxford ties, 1 40	32 20
19 pairs gents' calf brogans, 1 37½	26 12
25 pairs gents' common gaiters, 1 75	43 75
	968 42

14	32 pairs children's fine boots, 60	19 20
	35 pairs men's boots, mixed lot, 1 35	47 25
24	pairs gents' congress gaiters, 1 75	42 00
4	pairs gents' Scotch ties, 1 75	7 00
11	pairs Peruvian brogans, 1 25	13 75
27	pairs toilet slippers, 1 15	31 05
48	pairs calf slippers, 75	36 00
4	pairs calf shoes, 1 37½	5 50
3	pairs men's calf boots, 1 25	3 75
20	pairs children's copper tip'd, 65	13 00
6	pairs m's slips, 95	5 70
5	pairs for L. W. boots, 1 25	6 25
4	pairs for L. boots, 1 25	5 00
5	pairs for L. boots, 1 25	6 25
10	pairs mixed lot boots, 1 50	15 00
6	pairs misses peg half boots, 70	4 20
7	pairs children's cloth gaiters, 65	4 55
26	pairs children's sowed shoes, 45	11 70
22	pairs sowed boots, 50	11 00
41	pairs infants' soft shoes, 20	8 20
9	pairs misses' high cut boots, 75	6 75
3	pairs men's boots, 1 00	3 00
3	pairs men's fancy slips, 1 20	3 60
32	pairs children's peg half boots, 70	22 40
35	pairs children's sowed, 45	15 75
24	pairs misses' peg, 55	13 20
34	pairs misses' peg, 60	20 40
		381 45
15	32 pairs boys' brogans, 50	16 00
	23 pairs boys' brogans, 75	17 25
30	pairs boys' brogans, 75	22 50
9	pairs wo's shoes, 1 20	10 80
4	pairs men's rubbers, 1 00	4 00
8	pairs ladies' rubbers, 75	6 00
2	pairs ladies' shoes, 1 20	2 40
73	yards crash, 12½	9 12
10	linen table covers, 1 00	10 00
25	yds. yellow flannel, 50	17 50
10½	yds. red flannel, 40	4 20
18	yds. white flannel, 50	9 00
41½	yds. Dutch bed tick, 25	10 31
38¾	yds. Dutch bed tick, 18	6 97
48½	yds. Dutch bed tick, 15	7 28
37½	yds. blue devines, 15	5 63
30½	yds. white duck, 22	6 71
248½	yds. brown sheeting, 10½	26 09
84	yds. brown sheeting, 7	5 88
32½	yds. brown drill, 12½	3 90
15	yds. col. drill, 15	2 25
77	yds. Manchester checks, 15	11 55
275	lbs. prime sugar, 9½	26 13
3	sacks white wheat flower, 2 25	6 75
1	box M. R. raisins, 3 37½	3 38

3 cwt. nails, 4 00		12 00
20 lbs. gunpowder, 50		10 00
		278 85
16	17 steel barn shovels, 1 00	17 00
	15 wire sieves, 25	3 75
389 lbs. nails, 3*d*, 4*d*, 6*d*, 8*d*, and 10*d*, mixed lot, 5		19 45
5 handsaws, 1 50		7 50
2 log chains, 1 75		3 50
2 silk mixed dress coats, 12 50		12 00
1 business suit, 23 50		23 50
4 silk mixed coats, 12 50		50 00
2 black rib coats, 10 50		21 00
4 business coats, 9 00		36 00
4 pair fancy pants, 4 00		16 00
4 pairs silk mixed pants, 6 00		24 00
2 vests (business,) 3 75		7 50
42 yds. farmers' satin, 65		15 47
10 brown soft hats, 2 00		20 00
6 fine soft hats, 2 50		15 00
15 fine soft hats, 3 00		45 00
8 men's woolen wrappers, 1 25		10 00
3 men's woolen wrappers, 1 00		3 00
2 red flannel shirts, 1 50		3 00
14 hickory shirts, 75		10 50
37½ yds. black alpaca, 50		18 75
18 pairs misses shoes, 75		13 50
6 pairs men's socks, 20		12 00
83 yds. blue muslin, 12½		10 44
22 linen poc. h'dks, 15		3 30
18 linen poc. h'dks, 25		4 50
		426 86
17	42 linen poc. h'dkfs, 20	8 40
	11 lawn poc. h'dkfs, 15	1 65
4 lawn poc. h'dkfs 15		60
12 lawn poc. h'dkfs, 15		1 80
13 lawn poc. h'dkfs, 15		1 95
15¾ yds. black silk, 1 50		23 63
		38 03
		968 42
		381 45
		278 85
		426 86
		$2, 093 61

Endorsed : Complaint. Filed Sept. 3rd, 1861.
C. N. EARL, *Clerk*,
By G. W. PUTNAM, *Dept. Clerk.*

State of Minnesota, district court, fourth district, county of Anoka.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

The answer of the defendant in the above-entitled case shows to this court—

First. This def't denies generally and specifically each and every allegation in said complaint contained.

Second. And for a second and further defence this def't says that on the 28th day of August, A. D. 1861, a certain warrant of attachment was duly issued out of and under the seal of the district court of the United States for the district of Minnesota, in a certain action therein pending, wherein Tertius W. Wadsworth and George M. Wells, partners as Wadsworth & Wells, were plaintiffs, and George C. Colbath and James H. Colbath were defendants, directed to the marshal of the United States for the district of Minnesota, and wherein and whereby the said marshal was commanded to attach and safely keep the property, real and personal, of the said defendants in said writ, or so much thereof as would be sufficient to satisfy the claim of the pl'ffs, therein stated at two thousand dollars, to satisfy such judgment as should be recovered in said action. That each warrant of attachment
19 was duly delivered to this defendant as such marshal as aforesaid on the day of the issuing thereof. That under and by virtue of said warrant of attachment, and in obedience thereto, this defendant as said marshal as aforesaid, and not otherwise, did on the 28th day of August, A. D. 1861, at Monticello, in said district of Minnesota, attach and take into his possession the goods and property described in the schedule hereto annexed and made a part of this answer, and marked "A," and no others, as the property, and from the possession of the said defendants in said execution, and of the said warrant of attachment and of his doings thereon this defendant made due return, which is the same taking in the said pl'ffs' complaint complained of. That all the doings of the def't in the premises were done under the process, direction, authority, and command of the court, and not otherwise.

Third. And for a third and further defence this def't shows that on the 28th day of August, A. D. 1861, Tertius W. Wadsworth and George M. Wells, partners as Wadsworth & Wells, who were and are citizens of the State of Illinois, commenced their certain action in the district court of the United States for the district of Minnesota, against George C. Colbath and James H. Colbath, who then were and still are citizens of the State of Minnesota, for a sum exceeding five hundred dollars, by causing to be issued out of and under the seal of the said court a certain writ of summons directed to this def't as marshal as aforesaid, whereby this defendant was commanded to summons the said defendants in said writ of summons to be and
20 appear in the said district court of the United States on the second day of September, A. D. 1861, to answer to said pl'ff in said writ of plea of trespass on the case upon promises to their damage of two thousand dollars. That this def't duly served said writ upon the def't therein named personally in the said district of Minnesota, and of said writ made due return, and the said def't on the return day of said summons duly appeared in said action, and their appearance was duly entered of record in said court.

This defendant further shows that at the time of the commencement of said action the said defendant therein were indebted to the said pl'ffs therein in the sum of seventeen hundred and one dollars and fifty-six cents, which said indebtedness was incurred on or about the 23d day of March, A. D. 1861; that at the time of the commencement of said action the said pl'ffs in said

action caused to be made in their behalf a certain affidavit, setting forth the existence of such indebtedness, and that the said def'ts in said action had fraudulently incurred said indebtedness by representations as to the conditions of their affairs, and that the defendants had disposed of their goods with intent to defraud their creditors, and praying for a writ of attachment against the property of the said defendants. That said affidavit was duly endorsed by the Hon. R. R. Nelson, judge of the said district court of the United States, with an order that on filing the said affidavit, together with a bond approved by him, a warrant of attachment should issue as therein demanded. That thereafter the said affidavit and order thereon endorsed, together with a bond approved by said Judge Nelson, were duly and on the 28th day of August, A. D. 1861, filed in the office of the clerk of said court, and thereupon, and on said last-mentioned day, a certain warrant of attachment was duly issued in said action, out of and under the seal of said court, directed to the marshal of the United States for the district of Minnesota, and commanding the said marshal to attach and safely keep the property of the defendants therein named within his district, or so much thereof as would be sufficient—the amount due the said pl'ffs therein stated at two thousand dollars—to answer such judgment as should be recovered in said action. That during all the time aforesaid this defendant was and still is the marshal of the United States for the district of Minnesota. That the said warrant of attachment was delivered to this defendant to be executed on the day of the issuing thereof. That under and by virtue of said warrant of attachment this def't as marshal as aforesaid, and not otherwise, in the said district of Minnesota did attach and take into his possession the goods and property described in the schedule hereto annexed and marked "A," and made a part of this answer, and none others, and which said goods were of the value of seven hundred and fifty dollars, and no more, and which said taking *in* the same taking in the pl'ffs complaint complained of.

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22 And this defendant further shows that after the appearance of the said defendants in said action such proceedings were therein had that on the 27th day of September, A. D. 1861, it was considered and adjudged by the said court that the said plaintiffs in said action should recover of the defendants therein the sum of seventeen hundred and one dollars and fifty cents damages, and one hundred and forty dollars and forty cents costs, amounting in all to the sum of eighteen hundred and forty-one dollars and seventy-six cents, which said judgment was by the said court on said day duly rendered, and on the same day duly docketed in the office of the clerk of said court. That on the 28th day of September, A. D. 1861, a certain writ of execution was duly issued out of and under the seal of the said court in the aforesaid action, directed to the marshal of the United States for the said district, by which he was commanded to make, or cause to be made, the amount of said judgments out of the personal property of the said def'ts therein named, and if sufficient personal property could not be found, then out of the real property which the said defendants or either had on the 28th day of August, A. D. 1861, or at any time thereafter, and that he should have the said money before the justice of said court within sixty days after the receipt by him of the said writ, to be rendered to the said pl'ffs. That said execution was duly endorsed with a direction thereon to levy the sum eighteen hundred and forty-one dollars and seventy-six cents, with interest on seventeen hundred and one dollars and fifty-six cents thereof from the 28th day of August, A. D. 1861, and was delivered to the def't on the day of the issuing thereof. That under and by virtue of said writ as said marshal, and not otherwise, this defendant did on the second day of October, A. D. 1861, in the said district of Minnesota, levy upon and take into his possession the goods and property described in the schedule hereto

23

annexed, and marked A, and made a part of this answer, and none others, as the property of the defendants in said writ of execution, which said taking under said writs as aforesaid is the same taking in the complaint of the pl'ff complained of. Wherefore this defendant asks to be hence dismissed with his costs in this behalf expended.

ALLIS & PECKHAM,
Att'ys for Def't, City of St. Paul.

RAMSEY COUNTY, *ss:*

Cornelius F. Buck, of said county, being duly sworn, deposes and says that he is the def't named in the foregoing answer, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

C. F. BUCK.

Subscribed and sworn to before me this 3d day of October, A. D. 1861.

H. C. MARHALL,
Notary Public, Ramsey Co., Minn.

24 "A".

10 pair heavy boots.
12 " " copper tips.
12 " " prairie.
10 " " gents' long legs.
12 " " boys' best kip.
21 " " men's ½ soled.
11 " " calf.
55 " " gents' brogans.
5 " " custom tip.
5 " " home-made cowhide boots.
3 " " fancy kip "
9 " " cavalry "
11 pair boys' kip boots.
11 pair boys' calf boots.
8 pair oil dressed boots.
4 pair F'r red top boots.
4 pair heavy top boots.
13 pair boys' and youths' boots.
11 pair men's superior calf boots.
97 pair women's superior calf shoes.
16 pair men's brogans.
9 pair plow shoes.
101 pair boys' brogans.
76 pair men's brogans.
23 pair Oxford ties.
18 pair calf shoes.
25 pair Congress.
22 pair child. enamelled shoes.
25 35 pair mixed ladies' shoes.
24 pair men's congress gaiters.
4 pair Scotch ties.
11 pair prumella gaiters.
27 pair fancy slippers.
48 pair calf slippers.

4 pair men's congress shoes.
3 pair women's congress shoes.
20 pair child's copper tips.
6 pair ladies' slips.
24 pair bootees.
6 pair misses' ½ bootees.
7 pair child. cloth gaiters.
89 pair women's shoes.
9 pair misses' high tops.
3 pair ladies' bootees.
3 pair fancy morroco slips.
32 pair child's peg mor. boots.
35 pair child's sowed mar. boots.
58 pair misses' calf shoes.
32 pair boys' calf shoes.
23 pair boys' extra.
30 pair boys' common.
9 pair women's shoes.
4 pair gents' rubbers.
4 pair ladies'.
2 pair morrocco shoes.
73 yards starr crash.
26 10 pieces marble table cloth.
52½ y'ds yellow flannel.
16½ y'ds red flannel.
18 y'ds white flannel.
80¼ y'ds ticking.
48 y'ds ticking, German.
37½ y'ds denion.
30½ y'ds duck.
332½ y'ds brown sheeting.
32½ y'ds drilling.
15 y'ds white muslin.
77 y'ds crash.
275 lbs. prime sugar.
3 sacks flour.
1 box raisins.
3 kegs nails.
20 lbs. powder.
17 steel shovels.
15 sives.
389 lbs. nails.
2 rip-saws.
3 cross-cut saws.
2 silk mixed coats.
1 suit cassimere cloth.
4 coats silk mixed.
2 coats, ribbed silks.
4 coats, business.
4 pair fancy pants.
4 pair silk mixed pants.
2 cassimere vests.
42½ y'ds farmer's satin.
10 woolen hats.
6 woolen hats, fine.
15 woolen hats, coarse.

8 cotton undershirts.
3 cotton undershirts, heavy.
3 fancy flannel shirts.
14 hickory shirts.
37½ y'ds alpaca.
18 pairs misses' shoes.
6 pairs socks.
83½ y'ds bleached muslin.
122 linen hand'fs.
13¾ y'ds black silk.
2 log chains.

Endorsed: Answer. Filed April 22d, 1862.

R. M. JOHNSON, *Clerk.*

27 State of Minnesota, district court, county of Anoka, fourth district.

HORACE N. COLBATH
against
CORNELIUS F. BUCK. } Reply.

The plaintiff in the above-entitled action, replying to the answer of the defendant therein alleges that at the time of the taking by the defendant of the goods and chattels mentioned in said answer, the said plaintiff gave the defendant due notice that the said goods and chattels were the property of him, the said plaintiff, and forbid the defendant taking the same.

D. A. SEACOMBE, *Att'y for Pl'ff.*

HENNEPIN COUNTY, *ss:*

David A. Seacombe, being duly sworn, says that he is the attorney of the pl'ff in the above-entitled action; that the reply is true of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters that he believes it to be true; that the knowledge and grounds of belief of deponent on the subject are derived from statements made to deponent by same pl'ff, which statements deponent believes to be true, and that the absence of the said pl'ff from the county where deponent resides is the reason why this verification is not made by the pl'ff.

D. A. SEACOMBE.

28 Subscribed and sworn to this October 23d, 1861, before me.

CHAS. C. SEACOMBE,
Notary Public, Hennepin Co., Min.

Endorsed: Reply. Filed Ap'l 22d, 1862.

R. M. JOHNSON, *Clerk.*

In the case of H. N. Colbath against Cornelius F. Buck, the jury find for the plaintiff, in the sum of $2,093 61, and interest from the 30th day of August, 1861, amounting to $93, in all $2,186 61.

JARED BENSON, *Foreman.*

Endorsed: Verdict. Filed Ap'l 22, 1862.

R. M. JOHNSON, *Clerk.*

29 District court, fourth district.

H. N. COLBATH
against
C. F. BUCK. }

Be it remembered, that on the 22d day of April, A. D. 1862, the above-en-

titled action came on to be tried before his honor Chas. E. Vanderburg, and a jury, and thereupon the defendant moved to dismiss the complainant as insufficient in not alleging a wrongful taking. The motion was denied, and def't excepted.

The defendant then moved for judgment on the pleadings; which motion was denied, and defendant excepted.

The pl'ff then read in evidence a bill of sale, in the words and figures following, (a copy of which is hereto annexed, marked "A,") and called H. A. Colbath, who testified: I am the pl'ff. I knew the def't. I knew the goods mentioned in the complaint; on the 30th day of August, 1861, the goods were in the store I occupied at Monticello. The goods described in the complaint are a portion of those described in the bill of sale, the goods had been in my possession since May, 1861; on the 30th of August, 1861, the def't took the goods from my store. I gave no authority or consent. On the 30th
30 of August, '61, the goods were worth $2,093 00. I claimed the possession of the goods here at Anoka, after the taking.

Cross-examined.

On the 30th of August, 1861, I was here at Anoka. I did not see the marshal at Monticello.

The foregoing was all the evidence in the case.

The def't then requested the court to charge "that it being admitted by the pleadings that the def't took the goods as United States marshal, for the district of Minnesota, by virtue of process issuing out of the United States district court for the district of Minnesota, the right of property in those goods cannot be tried in this court, and there must be a verdict for the defendant.

The court refused so to charge, and the def't excepted.

And on the contrary, the court charged the jury that such a taking would be no defence to this action unless the jury should find that the property in the goods was in Geo. C. Colbath & Co., the def'ts in the process, and that that question was for them to try, to which the def't duly excepted.

The def't then asked the court to charge that under the pleadings, it was incumbent on the pl'ff to show not only a sale but a valuable consideration, and that not having done so, he must fail. The court refused so to charge, and the def't excepted.

31 The jury after retiring return into court with a verdict for the plaintiff, for $2,186 61, whereupon defendant gave notice of a motion for a new trial.

STATE OF MINNESOTA, *County of Ramsey:*

Henry L. Williams, of said county, being duly sworn, deposes and says that on the 19th day of May, A. D. 1862, he served the foregoing draft of proposed case upon D. A. Seacombe, esqr., the attorney of the pl'ff, by depositing in the post office in St. Paul, in said county, a true copy thereof, securely enclosed, directed to "D. A. Seacombe, esqr., Saint Anthony, Min.," and prepaying the postage thereon.

HENRY L. WILLIAMS.

Subscribed and sworn to before me this 21st day of May, A. D. 1862.
[SEAL.] JAS. W. GORMAN,
Notary Public, Minnesota.

Endorsed: Proposed case. Filed May 23d, 1862.
R. M. JOHNSON, *Clerk.*

32 A.

Know all men by these presents that we, G. C. Colbath & Co., in consideration of the sum of twelve thousand ($12,000) dollars to us in hand paid by Horace N. Colbath, the receipt whereof is hereby acknowledged, have sold, transferred, and assigned, and by these presents do transfer, sell, and assign, unto the said Horace N. Colbath the entire stock of goods and merchandize now situate in our store in Anoka, Anoka County, Minnesota, and also in our store and warehouse at Monticello, Wright County, Minnesota; also a lot of goods in St. Paul, in the storehouse of Temple & Beaupro, or on the road from St. Paul to Anoka; also all of our notes and book accounts; also all judgments in our favor, and all our interests in all pending suits. To have and to hold the same to the said Horace N. Colbath, his heirs, and assigns forever.

In witness whereof, we have hereunto set our hands this May 21st, 1861.

G. C. COLBATH & CO.

In presence of—
D. A. SEACOMBE.

Endorsed: Bill of sale A, filed June 4th, 1862.

R. M. JOHNSON, *Clerk.*

33 District court, fourth district.

At general term for the county of Hennepin, in Minneopolis, May 26th, 1862:

H. N. COLBATH
against
CORNELIUS F. BUCK.

This cause having come on to be heard at this term, on motion by def'ts to set aside the verdict, and for a new trial on the case made, and after hearing W. H. Peckham for motion, and D. A. Seacombe, esq., opposed, it is ordered that the said motion be denied.

C. E. VANDERBURGH, *Judge.*

Endorsed: Granted on the hearing and certified to Anoka County, May 26, 1862.

H. O. HAMLIN,
Clerk for Hennepin Co.

Filed May 30th, 1862.

R. M. JOHNSON, *Clerk.*

34 State of Minnesota, fourth district, district court, Anoka County.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

Amount of verdict		$2,186 61
Costs and disbursements:		
Cost paid clerk, as required by law, for jury fee	$2 00	
Clerk's fees	3 60	
		6 62
		2,193 23

Costs taxed June 3d, 1862.

R. M. JOHNSON, *Clerk.*

Endorsed: Taxation of costs.

35 State of Minnesota, fourth district, district court, county of Anoka.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

This action being at issue and having been tried before the Hon. Charles E. Vanderburgh, judge of the 4th judicial district, and a jury, on the 22d day of April, A. D. 1862, and the verdict of the jury having been entered, whereby they find for the plaintiff in the sum of two thousand one hundred and eighty-six 61-100 dollars, now, on motion of D. A. Seacombe, attorney for the pl'ff, it is hereby ordered and adjudged by the court that Horace N. Colbath, the plaintiff, recover of Cornelius F. Buck, the defendant, the aforesaid sum of two thousand one hundred and eighty-six 61-100 dollars, together with the sum of 6 62-100 dollars, costs and disbursements, amounting in the whole sum of two thousand one hundred ninety-three 23-100 dollars.

R. M. JOHNSON,
Clerk Dist. Court.

36 State of Minnesota, county of Anoka, district court, fourth district.

HORACE N. COLBATH
against
CORNELIUS F. BUCK.

STATE OF MINNESOTA, *County of Anoka, ss:*

CLERK'S OFFICE, *June 30th*, 1862.

I do hereby certify that I have compared the foregoing copy of the judgment roll in the above-entitled action, and of the endorsements thereupon, with the original, now remaining on file in my office, and that the same is a correct transcript therefrom, and of the whole of said judgment roll, and that the foregoing is a true copy of all the papers in the above-entitled action.

[SEAL.] In testimony whereof, I have caused the seal of the district court of Anoka County to be hereunto affixed this 30th day of June, 1862.

R. M. JOHNSON, *Clerk.*

37 State of Minnesota, supreme court, general July term, July 21st, 1862, sixteenth day.

Court met pursuant to adjournment. Present: A full bench.

CORNELIUS F. BUCK, pl'ff in error,
against
HORACE N. COLBATH, def't in error.

This day appeared the parties to this action, by their respective counsel, and thereupon this cause came on for hearing and argument upon the answer made to the writ of error herein, and was thereupon by said counsel submitted to the court and by the court taken under advisement.

A true record.

Attest:

A. McELRATH, *Dep't. Clerk.*

38 Supreme court, State of Minnesota, July general term, 1862.

CORNELIUS F. BUCK, pl'ff in error,
against
HORACE N. COLBATH, def't in error.

Whereas the district court of the fourth judicial district sitting within and

for the county of Anoka did, to wit, on the third (3d) day of June, A. D. 1863, render and enter judgment in this cause in favor of the above-named defendant on error (the pl'ff below) and against the above-named pl'ff in error (the def't below) for the sum of two thousand one hundred ninety-three 23-100 dollars, ($2,193 23,) damages and disbursements. And whereas the said defendant below, feeling aggrieved thereby, did, to wit, on the seventeenth day of June, A. D. 1863, duly sue out of our supreme court a writ of error to bring said cause before said court for the correction of alleged error therein, by the record of said cause appearing. And whereas the same came on to be heard, in its order upon the calendar, at the July term, A. D. 1862, of our said supreme court upon the answer made by the judge of said aforesaid district court to the said writ of error; and after hearing counsel of the respective parties therein and due deliberation thereupon had, the court
39 did, on the sixth (6th) day of March, A. D. 1863, determine, decree, and order that the judgment of the court below, to wit, the district court of the fourth judicial district, within and for the county of Anoka, be, and the same is hereby, in all things affirmed:

Now, therefore, and in pursuance of said order, it is now here adjudged that the judgment of the court below be, and the same is hereby, in all things affirmed; that said defendant in error recover of the said plaintiff in error the sum of two thousand two hundred ninety-three dollars and one cent, ($2,293 01,) the amount of the judgment below, with the interest thereon from the said 3d day of June, A. D. 1862, added thereto, together with the costs and disbursements of this court, to be by the clerk taxed herein, and that he have execution therefor.

Dated and signed this sixth (6th) day of March, A. D. 1863.

By the court.

Attest:

A. J. VAN VORHES, *Clerk*,
By E. H. BURRIT, *Dep't.*

Statement for judgment.

Amount of judgment below	$2, 193 23
Interest from Ap'l 22, 1862	99 78
	2, 293 01

Supreme court.

STATE OF MINNESOTA, *ss:*

I hereby certify that the above is a true and authentic copy of the entry of judgment of record in the supreme court in the action therein, as above entitled.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of the supreme court, at St. Paul, this 6th day of March, A. D 1863.

E. H. BURRITT, *Dep. Clerk.*

40 Supreme court, State of Minnesota.

I, A. J. Van Vorhes, clerk of said court, do hereby certify that I have carefully compared the above and foregoing copy with the original record. process, and judgment-roll of the action wherein Cornelius F. Buck is plaintiff in error, and Horace N. Colbath defendant in error, now remaining on

file and of record in my office, and that the same is a true and authentic transcript thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the supreme court and attached the proper stamp of the United States, at the city of St. Paul, this seventh day of April, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.]

A. J. VAN VORHES, *Clerk.*

Filed January 29, 1864.